

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

In the matter of the amendment of )  
ARM 38.3.601 and 38.3.602, )  
pertaining to Motor Carrier )  
Certificates and repeal of ARM )  
38.2.318 pertaining to electronic copy )  
of filings.

Notice of Public Hearing

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**MAR 02 2009**

Ravalli County Commissioners

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TO: All Concerned Persons

1. On April 29, 2009, at 10:00 a.m., the Department of Public Service Regulation will hold a public hearing in the Bollinger Room of the Public Service Commission (PSC) offices, 1701 Prospect Avenue at Helena, Montana, to consider the proposed amendment and repeal of the above-stated rule[s].

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 4:00 p.m. on April 21, 2009, to advise us of the nature of the accommodation you need. Please contact Verna Stewart, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601; telephone (406) 444-6170; TTD (406) 444-6199; fax (406) 444-7618; or e-mail [vstewart@mt.gov](mailto:vstewart@mt.gov).

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

38.3.601 OPERATION UPON GRANTING OF CERTIFICATE (1) Every person or corporation who is granted a certificate of public convenience and necessity to operate as a motor carrier by the commission must:

(a) remains the same

~~(b) within 30 days after the necessary operating compliance has been met begin actual operations as a motor carrier in the manner set forth in the application and by the commission.~~

(2) If a motor carrier fails to meet the necessary operating compliance ~~or to begin actual operations within the required time periods~~, the failure will may result in the revocation of the certificate of public convenience and necessity granted by the commission to the person or corporation.

AUTH: 69-12-201, 69-12-204, MCA

IMP: 69-12-101, et seq., 69-12-327, 69-12-401, 69-12-402, MCA

38.3.602 OPERATION AFTER SALE OR TRANSFER OF CERTIFICATE

(1) Every person or corporation who, with the approval of the commission, procures any right, privilege or certificate of public convenience and necessity as a motor carrier either by sale, assignment, lease, transfer or inheritance must:

(a) remains the same

~~(b) within 30 days after the necessary operating compliance has been met, a motor carrier must begin actual operations as a motor carrier.~~

(2) If a motor carrier fails to meet the necessary operating compliance ~~or to begin actual operations~~ within the required time periods, the failure will may result in the revocation of the right, privilege or certificate held by the motor carrier.

AUTH: 69-12-201, 69-12-204, MCA

IMP: 69-12-101, et seq., 69-12-327, 69-12-401, 69-12-402, MCA

REASON: Amendment of ARM 38.3.601 and 38.3.602 is reasonably necessary to amend the rules to conform to PSC practice. The PSC finds that enforcing these rules on all motor carriers would not be reasonable given that only Class D motor carriers are subject to a requirement that regular use is required in order to retain a certificate. § 69-12-314(2), MCA. Regular use requirements for Class D carriers are set forth at ARM 38.3.1201 through 38.3.1207. Requiring non-Class D carriers to show proof of operation within 30 days of acquiring a certificate, when no further showing is required, does not appear to have a rational basis.

The proposed rule changes are consistent with PSC discretion involving motor carrier certificate decisions as set out in ARM 38.3.1201 through 38.3.1207. According to ARM 38.3.1207, if the PSC determines that a carrier is not in compliance with § 69-12-314, MCA, the PSC may issue an order to show cause why the certificate should not be revoked. The changes to ARM 38.3.601 and 38.3.602 clarify that the PSC has the discretion to revoke a certificate, which is consistent with the permissive language of "may" used in ARM 38.3.1207. The PSC solicited industry comment on ARM 38.3.601(b) and 38.3.602(b) and is not persuaded by the comments received that these sections should be retained.

4. The PSC proposes to repeal the following rule:

38.2.318 ELECTRONIC COPY OF FILINGS found at page 38-43 of the Administrative Rules of Montana.

REASON: Repeal of ARM 38.2.318 is reasonably necessary to remove a rule that is outdated and no longer necessary. The enforcement of this rule has been suspended while new electronic filing rules are being considered and implemented.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, and must be received no later than April 29, 2009, 5:00 p.m., or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.mt.gov> (go to "Contact Us," "Comment on Proceedings Online," then complete and submit the form) no later than April 29, 2009. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-09.2.1-RUL.")

6. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

7. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

8. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes that name, e-mail address, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Verna Stewart at (406) 444-7618, emailed to [vstewart@mt.gov](mailto:vstewart@mt.gov), or may be made by completing a request form at any rules hearing held by the PSC.

9. An electronic copy of this Proposal Notice is available through the Secretary of State's website at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register. However, the PSC advises that it will decide any conflict between the official version and the electronic version in favor of the official printed version. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply to the proposed amendment of ARM 38.3.601 and 38.3.602, and have been fulfilled. Senator Barry Stang was previously notified by letter when the department began work on the substantive comment and wording of the amendments and will be notified again by letter dated February 17, 2009. A copy of the published notice will be sent within three days after publication. The bill sponsor notice requirements of 2-4-302, MCA, do not apply with respect to the proposed repeal of ARM 38.2.318.

/s/ Greg Jergeson  
Greg Jergeson, Chairman  
Public Service Commission

/s/ Robin A. McHugh  
Reviewed by Robin A. McHugh

Certified to the Secretary of State, February 25, 2009.